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7 DAVID WOLAN

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**

10 CHASE METALS, INC.,

11 Plaintiff,

12 v.

13 MARK A. BENAVIDES, an individual;  
14 and JOHN DOES 1-25, unidentified  
individuals,

15 Defendants.

16 DAVID WOLAN, an individual,

17 Cross-Complainant,

18 v.

19 CHASE METALS, INC. a/k/a TMTE, INC.  
20 d/b/a CHASE METALS, INC. f/k/a  
CHASE METALS, LLC, a Wyoming  
corporation; and MOES 1-10,

21 Cross-Defendants.

22 AND RELATED CROSS-ACTIONS.  
23

Case No. BC709355

HONORABLE JUDGE MICHAEL P. LINFIELD – DEPT. 34

DAVID WOLAN CROSS-COMPLAINT FOR:

- 1) BREACH OF THE IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING
- 2) INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS
- 3) FAILURE TO PAY WAGES FOR ALL  
HOURS WORKED
- 4) FAILURE TO PAY OVERTIME  
COMPENSATION
- 5) FAILURE TO PROVIDE MANDATED  
MEAL PERIODS AND PAID REST  
BREAKS
- 6) FAILURE TO FURNISH ACCURATE  
WAGE STATEMENTS

**Jury Trial Demanded**

24  
25  
26  
27 Defendant/cross-complainant David Wolan (“Wolan”) alleges upon knowledge with respect to  
28 his own acts, and upon information and belief as to all other matters, as follows:



1           1.     Wolan is an individual residing in the County of Los Angeles, California.

2           2.     Cross-defendant Chase Metals, Inc. a/k/a TMTE, Inc. d/b/a Chase Metals, Inc. f/k/a Chase

3 Metals, LLC (“Chase Metals”) is a corporation organized pursuant to the laws of the State of Wyoming,

4 having its principal place of business in the County of Los Angeles, California.

5           3.     The true names and capacities of those individuals and/or entities named herein as Moes

6 1 through 10 are unknown to Wolan at this time. Each fictitiously named cross-defendant is responsible

7 for the events and/or occurrences alleged herein and/or conspired in some manner with the named cross-

8 defendant or with each other, and Wolan’s damages alleged herein were proximately and legally caused

9 by their acts and/or omissions. Wolan will seek leave to amend this cross-complaint to state the true names

10 and capacities of such fictitiously named cross-defendants once they are ascertained. Cross-defendants

11 Chase Metals and Moes 1 through 10 are sometimes referred to herein collectively as “Chase Metals”

12 or “Cross-Defendants.”

13           4.     At all relevant times, each of the Cross-Defendants acted as an agent, employee and/or co-

14 conspirator of the other Cross-Defendants, and in doing the things alleged herein acted within the course

15 and scope of such agency, employment, and/or in furtherance of the conspiracy. Each Cross-Defendant’s

16 acts alleged herein were done with the knowledge, permission, and consent of each of the other Cross-

17 Defendants and were ratified by them.

18           5.     Chase Metals is a precious metals retailer, marketing and selling gold and silver products

19 to investors throughout the United States, largely through its website, www.metals.com. On or about June

20 14, 2017, Chase Metals engaged Wolan as a precious metals sales representative at its office in Beverly

21 Hills, California, knowingly falsely classifying Wolan as an independent contractor, and coercing him to

22 sign an Independent Contractor Agreement (the “ICA”) as a condition of employment. Pursuant to the

23 ICA, Chase Metals instructed Wolan to falsely affirm and ratify (*i.e.*, lie about) his purported status as

24 an independent contractor in the event “any governmental entity, including without limitation state labor

25 agencies and/or state or federal taxing authorities, should question or challenge the independent contractor

26 status of [Wolan].” The ICA further purportedly required Wolan to waive all state and federal claims

27 arising from Chase Metals’ false classification of his employment status and its failure to comply with

28 California’s wage and hour laws, in violation of, *inter alia*, California Labor Code section 206.5. During



1 the first year-plus of Wolan's employment, Chase Metals paid him as an independent contractor rather  
2 than as an employee, paying him solely by handwritten check, without the requisite itemized statement.  
3 A copy of the ICA is attached hereto as Exhibit A.

4 6. In reality, Wolan was under Cross-Defendants' control and direction in connection with the  
5 performance of his duties, both pursuant to the ICA and in fact; the services Wolan provided were within  
6 Chase Metals' usual course of business; and at all relevant times, Wolan was not customarily engaged in  
7 an independently established trade, occupation, or business of the same nature as the work he performed  
8 for Chase Metals. Accordingly, despite Chase Metals' knowingly false classification, and despite the  
9 ICA's language to the contrary, Wolan was, pursuant to California law, an employee of Chase Metals.

10 7. In or about August 2017, Chase Metals instructed Wolan (like other sales representatives)  
11 to create a limited liability company through which Chase Metals would then pay his wages, presumably  
12 to reinforce the false impression that Wolan was an independent contractor employed through the LLC.  
13 Following Chase Metals' instructions, on or about August 29, 2017, Wolan created Harper Metals Group,  
14 LLC in Florida, and thereafter received his Chase Metals wages through that LLC. Wolan has never used  
15 Harper Metals Group, LLC for any other purpose, and Harper Metals Group, LLC has never received  
16 any compensation from any source other than Chase Metals.

17 8. On or about August 9, 2018 – not coincidentally, just days after being served with former  
18 employee Mark Benavides' cross-complaint alleging a slew of wage and hour law violations arising from  
19 Chase Metals' false classification of him as an independent contractor – Chase Metals required Wolan  
20 (like other sales representatives) to sign an Employee Agreement (the "EA"), designating Wolan an at  
21 will employee at the compensation rate of \$13.25 per hour. Chase Metals warned Wolan that refusal  
22 to sign the EA would result in immediate termination of his employment. Although the EA represented  
23 Chase Metals' first acknowledgment that Wolan was an employee rather than an independent contractor,  
24 neither his job responsibilities nor Chase Metals' control over his performance of his duties changed.  
25 Indeed, other than *purportedly* changing Wolan's status from independent contractor to employee, the ICA  
26 and EA are virtually identical. A copy of the EA is attached hereto as Exhibit B.

27 9. On or about August 16, 2018, Chase Metals' accountant, William Peters, instructed Wolan  
28 to convert Harper Metals, LLC into a corporation, enabling Chase Metals to directly pay Wolan his salary



1 as an employee, while paying him certain earned commissions through the new corporation. Following  
2 those instructions, on or about August 17, 2018, Wolan created Harper Metals Group, Inc. in Florida.

3 10. Throughout Wolan's 15-month employment – during most of which Chase Metals falsely  
4 classified Wolan as an independent contractor and upon information and belief, did not maintain workers  
5 compensation insurance that would cover Wolan's damages – Chase Metals fostered and perpetuated a  
6 toxic, abusive, intolerably stressful environment that directly led to Wolan's hospitalization on multiple  
7 occasions, with one such hospitalization in late June 2018, caused by an anxiety attack and dehydration,  
8 prompting Chase Metals to retaliate by suspending Wolan for leaving during the workday. Moreover,  
9 after Wolan recruited, trained, and mentored newly-hired sales representatives – including for example,  
10 Nathan Peters, Kyle Sienna, Alexander Giaime, and Alexander Spellane – throughout their trial periods,  
11 frequently spending unpaid time giving them private sales training, Chase Metals transferred those new  
12 sales representatives to team leaders, and instructed them to bypass Wolan by bringing qualified leads  
13 to those team leaders (rather than to Wolan), drastically reducing Wolan's opportunities to earn sales  
14 commissions, and frequently concealing from Wolan the consummation of sales to clients Wolan had  
15 worked with, to avoid paying his share of earned commissions. Furthermore, Chase Metals' Managing  
16 Director Luke McCain frequently pressured Wolan and other sales representatives to go out for dinner and/  
17 or drinks after business hours, with the penalty for declining being given less leads. Cross-Defendants  
18 also degraded Wolan and other sales representatives on the sales floor, yelling at and insulting them in  
19 front of their peers. After overworking Wolan and other sales representatives in violation of wage and  
20 hour laws, Cross-Defendants callously admonished them when the long, stressful work hours led to time  
21 missed due to illness or even hospitalization. When Chase Metals' clients would call to ask for refunds  
22 and/or to complain about Chase Metals' service, Cross-Defendants would require Wolan to handle those  
23 calls, even though they were not his clients, and instruct him to refuse to return those clients' money.

24 11. Further, Chase Metals coerced Wolan to work Saturdays, and urged him to work Sundays,  
25 with the threat of being deprived of the leads that are the lifeblood of a sales representative. When Wolan  
26 sought mid-day (*i.e.*, when he should have been afforded a lunch break) treatment from a chiropractor due  
27 to stress-induced pain, his supervisor admonished him that he needed to schedule doctor appointments  
28 before or after work – even though Wolan was required to be at his work desk from 7:00 a.m. through



1 6:00 p.m., and often arrived earlier and stayed later. In fact, Chase Metals' supervisors literally walked  
2 around the office with a seating chart each hour, and took leads away from sales representatives who were  
3 not at their desks.

4 12. Throughout Wolan's 15-month employment, Chase Metals intentionally and systematically  
5 violated California's wage and hour laws, by *inter alia*, failing to pay Wolan for all the hours he worked;  
6 failing to pay Wolan overtime compensation for all the hours he worked exceeding eight (and sometimes  
7 twelve) per day, and/or forty per week; failing to afford Wolan legally-mandated meal and compensated  
8 rest break periods; and failing to furnish accurate itemized wage statements.

9 13. For reasons including without limitation those alleged herein, on September 10, 2018,  
10 Wolan tendered his written resignation—which Chase Metals' Managing Director Luke McCain initially  
11 refused to accept, urging Wolan to reconsider – and directly contrary to Cross-Defendants' allegations,  
12 notified Chase Metals that certain clients and prospective clients with whom he had been working would  
13 need immediate attention from the sales representative(s) to whom they would ultimately be reassigned.  
14 Also directly contrary to Cross-Defendants' allegations, when Chase Metals' clients attempted to contact  
15 Wolan after his resignation, rather than "stealing" those clients as Chase Metals falsely accuses, Wolan  
16 immediately advised Chase Metals of those inquiries so it could follow up with and properly serve those  
17 clients.

## 18 **FIRST CAUSE OF ACTION**

19 (For Breach of Implied Covenant of Good Faith and Fair

20 Dealing Against Chase Metals, Inc. and Moes 1 through 5)

21 14. Wolan realleges and incorporates by reference the allegations of paragraphs 1 through 13  
22 as though set forth in full herein.

23 15. On or about June 14, 2017, at Beverly Hills, California, Chase Metals, by and through its  
24 authorized agent Simon Batashvili (aka Simon Bakshati), and Wolan entered into the ICA, pursuant to  
25 which Chase Metals engaged Wolan as a precious metals sales representative responsible for presenting,  
26 promoting, and selling Chase Metals' products to existing and prospective clients. Also pursuant to the  
27 ICA, Chase Metals instructed Wolan to falsely affirm and ratify his purported status as an independent  
28 contractor in the event "any governmental entity, including without limitation state labor agencies and/or



1 state or federal taxing authorities, should question or challenge [his] independent contractor status” – at  
2 least potentially instructing Wolan to commit perjury to shield Cross-Defendants from penalties for their  
3 pervasive wage and hour law violations. The ICA further purportedly required Wolan to waive all state  
4 and federal law claims arising from Cross-Defendants’ false classification and failure to comply with  
5 California’s wage and hour laws, in violation of, *inter alia*, California Labor Code section 206.5, which  
6 states in relevant part: “An employer shall not require the execution of a release of a claim or right on  
7 account of wages due, or to become due, or made as an advance on wages to be earned, unless payment  
8 of those wages has been made. A release required or executed in violation of the provisions of this section  
9 shall be null and void as between the employer and the employee. Violation of this section by the employer  
10 is a misdemeanor.”

11 16. On or about August 9, 2018 – right after being served with a cross-complaint alleging a slew  
12 of wage and hour law violations arising from false classification of employees as independent contractors  
13 – Chase Metals required Wolan to sign the EA, designating Wolan as an at will employee at the pay rate  
14 of \$13.25 per hour. Chase Metals warned Wolan that he would be terminated unless he signed the EA.  
15 Other than purportedly changing Wolan’s status from independent contractor to employee, the ICA and  
16 EA are virtually identical, and none of Wolan’s job responsibilities changed from when he was falsely  
17 classified as an independent contractor.

18 17. Implied in each of the ICA and the EA is a covenant by Chase Metals that it would at all  
19 times act in good faith and deal fairly with Wolan, and would neither do anything, nor enable or facilitate  
20 others within its control in doing anything that would deprive Wolan of the benefits of the ICA and the  
21 EA, as applicable.

22 18. By acting as alleged herein, including without limitation presenting, promoting, and selling  
23 Chase Metals’ precious metals products to both existing and prospective clients; recruiting, training, and  
24 mentoring newly-hired sales representatives throughout their trial periods; and performing all the services  
25 he was asked to perform, Wolan fulfilled all of his obligations pursuant to both the ICA and the EA.

26 19. By acting and/or refusing to act as alleged herein, including without limitation instructing  
27 Wolan to lie to state and federal labor and/or taxing authorities about his false independent contractor  
28 classification; coercing, with the threat of termination, Wolan to enter into the ICA, and subsequently the



EA, which falsely classified Wolan as an independent contractor when he was in fact an employee; by setting Wolan up to fail by transferring to team leaders the newly-hired sales representatives Wolan was required to and did train, and instructing them to bypass Wolan by bringing qualified leads to those team leaders, thereby substantially reducing Wolan's opportunity to earn sales commissions; by fostering and perpetuating a toxic, abusive, and intolerably stressful work environment in violation of California wage and hour laws; by suspending Wolan in retaliation for his hospitalization due to his work-stress induced anxiety attack; and by conditioning access to leads upon Wolan agreeing to have after-work dinners and drinks with his supervisor, Cross-Defendants breached the implied covenant of good faith and fair dealing owed to Wolan.

20. As a direct, proximate, and legal result of Cross-Defendants' breach of the implied covenant of good faith and fair dealing as alleged herein, Wolan has sustained damages in an amount to be proven at trial, but presently believed to exceed \$200,000.

21. To the extent Moes 1-5 are responsible for Chase Metals' obligations under the covenant of good faith and fair dealing implied in the ICA and the EA, they are equally responsible for Wolan's damages alleged herein.

## SECOND CAUSE OF ACTION

(For Intentional Infliction of Emotional  
Distress Against All Cross-Defendants)

22. Wolan realleges and incorporates by reference the allegations of paragraphs 1 through 21 as though set forth in full herein.

23. Cross-Defendants performed the acts alleged herein—including without limitation coercing, as a condition of employment, Wolan to enter into the ICA, and subsequently the EA, pursuant to which Chase Metals instructed Wolan to lie to state and federal authorities about his false classification as an independent contractor and to waive all state and federal law claims arising from Cross-Defendants' false classification and failure to comply with California's wage and hour laws; suspending Wolan in retaliation for leaving work to be admitted to a hospital for his work-related stress induced anxiety attack; stealing or knowingly allowing other sales representatives to steal leads from Wolan and consequently drastically reducing commissions he could earn; taking leads away from Wolan if he declined to go out for dinner



1 and/or drinks after business hours with Chase Metals' Managing Director Luke McCain; degrading and  
2 yelling at Wolan and other sales representatives on the sales floor in front of their peers; passing off to  
3 Wolan the stressful task of refusing, whether justified or not, refund requests of clients (of Chase Metals,  
4 not Wolan) who lost large sums of money; and falsely accusing Wolan of stealing Chase Metals' clients  
5 and prospective clients, all abusing their position of superiority and power over Wolan as his employer(s)  
6 – with full knowledge of their illegal nature, and with intent to cause Wolan to suffer severe emotional  
7 distress, or at the very least with reckless disregard of the likelihood of causing Wolan to suffer severe  
8 emotional distress.

9         24. Wolan is informed and thereupon believes at all relevant times, Cross-Defendants did not  
10 maintain workers compensation insurance that would compensate Wolan for his damages, consequently  
11 waiving Cross-Defendants' rights to assert workers compensation exclusivity as a defense to the claims  
12 alleged herein.

13         25. Cross-Defendants' conduct alleged herein was outrageous in that they coerced Wolan to  
14 enter into the oppressive ICA and EA, with their illegal waiver provisions; exerted undue influence over  
15 Wolan arising from their position of power as his employer, threatening him with termination if he did not  
16 immediately accede to Cross-Defendants' unreasonable (and sometimes illegal) demands; fostered and  
17 perpetuated a toxic, abusive, and intolerably stressful environment marred by back-stabbing, fist fights,  
18 client and/or lead stealing, hourly attendance checks, illegal working conditions in violation of multiple  
19 California wage and hour laws, and unwarranted favoritism; and retaliated against Wolan by suspending  
20 him for leaving work to be admitted to a hospital due to a work-related anxiety attack and dehydration,  
21 all calculated to impair, and actually substantially impairing, Wolan's livelihood.

22         26. As a direct, proximate, and legal result of Cross-Defendants' conduct as alleged herein,  
23 Wolan has suffered severe emotional distress and consequent damages in an amount to be proven at trial,  
24 but presently believed to exceed \$1,000,000.

25         27. Cross-Defendants did the acts alleged herein maliciously, deliberately, fraudulently, with  
26 intent to oppress Wolan, and in conscious disregard of Wolan's rights, interests, and welfare. Therefore,  
27 Wolan is entitled to punitive damages in an amount to be proven at trial.

28 ///



1 **THIRD CAUSE OF ACTION**

2 (For Failure to Pay Wages for All Hours Worked

3 Against Chase Metals and Moes 1 through 5)

4 28. Wolan realleges and incorporates by reference the allegations of paragraphs 1 through 27  
5 as though set forth in full herein.

6 29. California Labor Code section 204 requires employers to pay their employees as follows:  
7 "All wages... earned by any person in any employment are due and payable twice during each calendar  
8 month, on days designated in advance by the employer as regular paydays... all wages earned for labor  
9 in excess of the normal work period shall be paid no later than the payday for the next regular payroll  
10 period."

11 30. California Labor Code sections 218 and 1194 afford employees, including Wolan, the right  
12 to recover unpaid wages, interest thereon, costs of suit, and reasonable attorney's fees.

13 31. At all relevant times, though Cross-Defendants falsely classified Wolan as an independent  
14 contractor, he was a non-exempt employee covered by California Labor Code section 204, and entitled  
15 to receive on designated paydays all wages earned during the preceding pay period, but Cross-Defendants  
16 intentionally, routinely, and systematically failed to compensate Wolan for many of the hours he worked,  
17 thereby engaging in unfair competition within the meaning of California Business & Professions Code  
18 section 17200, *et seq.*, entitling Wolan to restoration of all money and other property Cross-Defendants  
19 acquired by means of such unfair competition, pursuant to California Business & Professions Code section  
20 17203.

21 32. As a direct, proximate, and legal result of Cross-Defendants' failure to compensate Wolan  
22 for all his hours worked, Wolan has sustained damages in an amount to be proven at trial, and is entitled  
23 to recover the unpaid balance of the full amount of wages for the hours he worked.

24 33. Pursuant to California Labor Code sections 218, 218.5, and 218.6, Wolan is entitled to  
25 recover from Cross-Defendants all unpaid wages, prejudgment interest, costs of suit, and reasonable  
26 attorney's fees.

27 ///

28 ///



1 **FOURTH CAUSE OF ACTION**

2 (For Failure to Pay Overtime Compensation

3 Against Chase Metals and Moes 1 through 5)

4 34. Wolan realleges and incorporates by reference the allegations of paragraphs 1 through 33  
5 as though set forth in full herein.

6 35. California Labor Code section 510 provides that employees shall not be employed more  
7 than eight hours in any workday or more than forty hours in any workweek unless they are paid overtime  
8 compensation at the rate of no less than 1½ times their regular rate of pay, or more than twelve hours in  
9 any workday unless they are paid overtime compensation at the rate of no less than twice their regular rate  
10 of pay.

11 36. California Labor Code sections 218 and 1194 afford employees the right to recover unpaid  
12 overtime compensation, interest thereon, costs of suit, and reasonable attorney's fees.

13 37. Threatening to take away leads, suspend, and/or terminate him, Chase Metals regularly  
14 and systematically required Wolan to work in excess of eight hours per regular workday and in excess  
15 of forty hours per regular workweek without compensating him at the legally required overtime rate,  
16 thereby engaging in unfair competition within the meaning of California Business & Professions Code  
17 section 17200, *et seq.*, entitling Wolan to restoration of all money and other property Cross-Defendants  
18 acquired by means of such unfair competition, pursuant to California Business & Professions Code section  
19 17203.

20 38. As a direct, proximate, and legal result of Cross-Defendants' failure to pay Wolan overtime  
21 wages at the statutorily-mandated rate, Wolan has sustained damages in an amount to be proven at trial,  
22 and is entitled to recover the unpaid balance owed for overtime hours he worked.

23 **FIFTH CAUSE OF ACTION**

24 (For Failure to Provide Mandated Meal Period and Paid Rest

25 Breaks Against Chase Metals and Moes 1 through 5)

26 39. Wolan realleges and incorporates by reference the allegations of paragraphs 1 through 38  
27 as though set forth in full herein.

28 ///







1 applicable hourly rates in effect during the pay period and the corresponding number of hours worked  
2 at each hourly rate by the employee....”

3 45. Cross-Defendants knowingly and intentionally failed to comply with California Labor  
4 Code section 226, subdivision (a) upon each payment to Wolan during the time Cross-Defendants falsely  
5 classified him as an independent contractor, by failing to provide the requisite itemized and accurate  
6 wage statements.

7 46. Pursuant to California Labor Code section 226, subdivision (e)(2)(A), Wolan is deemed  
8 to have suffered damages as a direct, proximate, and legal result of Cross-Defendants’ failure to comply  
9 with section 226, subdivision (a).

10 47. Pursuant to California Labor Code section 226, subdivision (e)(1), Wolan is entitled to  
11 recover from Cross-Defendants statutory penalties, plus costs of suit, and reasonable attorney’s fees.

12 WHEREFORE, Wolan prays for judgment in his favor and against Cross-Defendants as follows:

- 13 1. For economic damages in an amount to be proven at trial;
- 14 2. For non-economic damages in an amount to be proven at trial;
- 15 3. For punitive damages in an amount to be proven at trial;
- 16 4. For statutory damages and penalties imposed by the California Labor Code and applicable  
17 IWC Wage Orders;
- 18 5. For attorney’s fees to the extent authorized by law;
- 19 6. For costs of suit incurred herein; and
- 20 7. For such other relief as the Court deems just and proper.

21 DATED: January 4, 2019

TOVAR & COHEN LLP

22 By: \_\_\_\_\_



DAVID J. COHEN

23 Attorneys for defendant/cross-complainant  
24 DAVID WOLAN  
25  
26  
27  
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**EXHIBIT A**




## INDEPENDENT CONTRACTOR AGREEMENT

This INDEPENDENT CONTRACTOR AGREEMENT, comprised of this page, the attached Standard Terms and Conditions and all Exhibits hereto (collectively taken together as one agreement "Agreement") is entered into by and between CHASE METALS LLC (collectively "Company"), and the following contractor ("Contractor"), effective on the date below ("Effective Date"), subject to all Terms, Conditions, and attachments hereto:

Effective Date: 6/14/17  
Contractor Name: David Woban  
Contractor Address: 344 Hawser Blvd S-112 Los Angeles, CA 90036  
Contractor Services: See Attachment A  
Compensation: See Attachment B  
Work Location: \_\_\_\_\_

Agreed to and accepted by:

### CONTRACTOR

x   
Signature

David Woban  
Printed Name



## EXHIBIT A

### CONTRACTOR SERVICES

- Acting as a sales representative for company by presenting, promoting, and selling Company's products to prospective and existing customers
- Initiating the sales process by making initial contact with potential clients/customers of Company
- Effectively documenting/tracking sales efforts directed at prospective/existing customers using Company's database and other computer infrastructure.
- Building rapport with Company's clients and customers to increase their trust/confidence in Company so as to effectuate successful sales
- Sourcing new sales opportunities for Company's products through outbound cold calls and emails and inbound lead follow-up
- Completing client/customer orders by recording names, addresses, and purchases according to Company's policies and procedures
- Referring orders for finalization to the appropriate Company representative and servicing client/customer needs in order to successfully close sales
- Generating revenue for Company by successfully closing sales of Company's Products with new clients and customers
- Achieving sales targets within schedule
- Expanding sales in existing accounts by introducing Company's other products to existing clients/customers
- Cooperating with other team members to coordinate sales efforts to prospective clients/customers, to provide the best customer/client experience as well as avoiding unnecessary disputes between team members over sales commissions
- Maintaining positive relationships with clients/customers assigned to Contractor for handling and/or for which Contractor has closed sales
- Providing timely callbacks, responses, and other customer service to clients/customers assigned to Contractor for handling and/or for which Contractor has closed sales
- Addressing customer problems, complaints, or other grievances by timely notifying Company management
- Assisting Company secure its client information for accounts within Contractor's handling by completing regular database backups
- All other services as may needed by Company from time to time.



## STANDARD TERMS AND CONDITIONS

1. **Engagement as Contractor.** The Company retains Contractor for the purposes of carrying out the tasks set forth in the form attached as Exhibit A hereto as well as other tasks and assignments as may be requested from Contractor by Company from time to time, as well as other duties as are customarily performed by a Contractor in a similar position, subject to all of Company's rules, regulations and other guidelines (collectively "Contractor Services"). This Agreement is entered into and binding upon Contractor as well as all individuals, members, owners, shareholders, directors, employees, or other contractors employed by, affiliated with, related to Contractor providing services to Company pursuant to this Agreement ("Contractor Staff.") Contractor and Contractor Staff shall be referred to herein as "Contractor Parties."
2. **Best Efforts.** Contractor Parties agree to perform faithfully, industriously, and to the best of their ability, experience, and talents, all of the duties that may be required by the express and implicit terms of this Agreement, to the satisfaction of Company. Such duties shall be provided at such place(s) as the needs, business, or opportunities of Company may require from time to time.
3. **Contractor Compensation.** Contractor shall be paid the compensation identified on Exhibit B, subject to adjustment by Company as may be needed from time to time. Contractor shall issue monthly invoices, for work performed and hours worked, and submit them to Company no less than monthly. Expenses incurred by Contractor, if pre-approved by Company, will also be reimbursed to Contractor.
4. **Termination.** The Company or Contractor may terminate this Agreement at any time (provided 7 days' written notice for termination by Contractor) with or without cause and without further obligation to each other, except for payment due for satisfactory services rendered prior to the date of notice of termination. In the event notice of termination is given by either party, Contractor shall furnish such information, materials and any other appropriate assistance to the Company as may be reasonably required by the Company in connection with the Contractor Services provided. Upon termination of this Agreement, Contractor shall promptly deliver to the Company all Company documents and materials (including all copies) pertaining to (i) Contractor's engagement, (ii) Confidential Information, and (iii) Inventions and other Intellectual Property, whether prepared by Contractor or otherwise in Contractor's possession or control, except that Contractor may retain personal copies of records relating to Contractor's engagement and this Agreement.
5. **Independent Contractor Relationship.** Contractor Parties' relationship with the Company is that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to create an employee relationship, partnership, agency, joint venture or employment relationship between Company and the Contractor or any of the Contractor Staff. No part of Contractor's or Contractor Staff's compensation will be subject to withholding by the Company for the payment of any social security, federal, state or any other employee payroll taxes unless otherwise arranged in writing between the Company and Contractor. The Company will regularly report amounts paid to Contractor by filing Form 1099-MISC with the Internal Revenue Service as required by law.
  - A. **Indemnification.** Company has entered into this Agreement in reliance on information provided by the Contractor, including the Contractor Parties' express representation that Contractor is an independent contractor and in compliance with all applicable laws related to work as an independent contractor. If any regulatory body or court of competent jurisdiction finds that the Contractor and/or Contractor Parties are not independent contractors and/or are not in compliance with applicable laws related to work as independent contractors, based on the Contractor Parties' own actions, the Contractor and/or Contractor Parties shall assume full responsibility and liability for all taxes, assessments, and penalties imposed against the Contractor and/or Contractor Parties and/or the Company resulting from such contrary interpretation, including but not limited to taxes, assessments, and penalties that would have been deducted from the Contractor and/or Contractor Parties' earnings had the Contractor and/or Contractor Parties been on the Company's payroll and employed as an employee of the Company.
  - B. **Claims and Release.** Neither Contractor nor Contractor Staff shall assert, claim, allege, or otherwise initiate any legal proceeding of any kind or nature, whether civil, administrative or otherwise, asserting that they are or have been anything other than an contractor to Company. In this respect, Contractor Parties and each of them agree and acknowledge that Company shall neither have nor exercise any control or direction over the methods by which Contractor Parties provide Contractor Parties' services or perform Contractor Parties' duties, work, functions, or other activities. Contractor Parties specifically agree that



Contractor Parties shall take all reasonable steps and cooperate with Company to disavow Contractor Parties' status as anything other than an independent contractor, in each and every instance where they and/or any other third person might allege otherwise. In the event any governmental entity, including without limitation state labor agencies and/or state or federal taxing authorities, should question or challenge the independent contractor status of Contractor Parties, the Contractor Parties shall in all cases affirm and ratify that Contractor Parties was at all times an independent contractor. In the event Contractor Parties' relationship is legally determined or deemed or alleged to be anything other than an independent contractor, Contractor Parties waive, release, and discharge Company from all claims pursuant to state or federal law that may have accrued from the inception of the parties' relationship and including all prospective and unknown claims, including specifically claims asserting misclassification, overtime, missed meal/rest breaks, minimum wage, and any claims for associated penalties, statutory penalties, attorneys' fees, interest, and otherwise, whether pursuant to any individual action or private attorney general action. In making this release, Contractor Parties acknowledge Contractor Parties have reviewed California Civil Code Section 1542 which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his settlement with the debtor."

Being aware of said code section, Contractor Parties hereby expressly waive any rights Contractor Parties may have against Company, as well as under any other statute or common law principles of similar effect insofar as those rights pertain to the matters released herein.

C. Representations and Warranties. Contractor and/or Contractor Parties represent and warrant that:

- 1) They have the sole right to control and direct the means, details, manner, and method by which the Contractor Services required by this Agreement will be performed.
- 2) The Contractor Services required by this Agreement shall be performed by the Contractor or the Contractor Staff, and the Company shall not be required to hire, supervise, or pay any assistants to help the Contractor perform such Services and/or Project Assignments.
- 3) Contractor is responsible for paying all ordinary and necessary expenses of all of its employees, staff, members, or other contractors.

6. Loyalty and Confidentiality Covenants.

- A. Duty of Loyalty and Lawful Conduct. Contractor Parties agree to perform loyally and conscientiously Contractor Parties' duties under this Agreement. Contractor Parties shall not perform Contractor Parties' duties, or take any action or omission that in any way violates federal, state, or municipal laws, regulations, statutes, or ordinances, or violates the rights of Company, Company's other employees, or third parties.
- B. General Confidentiality Clause. At all times during Contractor Parties' relationship with Company and thereafter, Contractor Parties will hold in trust, keep confidential and not disclose to any third party, or make any use of, the Confidential Information of the Company or of the persons with which the Company has business relationships, except as may be desirable or necessary in the course of Contractor Parties' relationship with the Company, without the prior written consent of the Company. For purposes of this Agreement, the term "Confidential Information" includes all information that is maintained and designated as such by the Company, or any employee of Company, including but not limited to the following: all proprietary or intellectual property, including creative works of authorship, including video, audio, written works, electronic, print, hard-copy, audiovisual works of any kind or nature, or any other work of authorship fixed in a tangible or intangible form of expression, software, software code, worldwide patents, patent applications, patent rights, copyrights, copyright registrations, moral rights, trade names, trademarks, service marks, domain names and



registrations and/or applications for all of the foregoing, trade secrets, know-how, work rights, rights in trade dress and packaging, goodwill and all other intellectual property rights and proprietary rights relating in any way thereto, technical information, including research programs and methods, product development plans, functional and technical specifications, technology, inventions, ideas, concepts, designs, drawings, analysis, research, methods, techniques, processes, computer software, data, and other technical know-how and materials, business and marketing plans, worldwide marketing rights, client or customer databases, vendor lists, vendor identities, partner identities, lists, and identifying information, software, customer and supplier lists, price lists, mailing lists, financial information, profit margins, operational margins, customer and supplier records and other confidential or proprietary information relating thereto, or any other proprietary techniques and confidential information that the Company develops, compiles or owns, or that the Company receives under conditions of confidentiality from the persons with which it has business relationships, or any other valuable information of the Company relating to the business affairs or fields of interest of the Company. Confidential Information may take the form of software, audio or video tapes, computer media, printouts, records, databases, manuals, letters, notebooks, reports, blueprints, drawings, sketches or photographs, including copies, all of which at all times shall remain the property of the Company or the person from which the Company obtained such materials.

Contractor Parties agree and understand that (a) Confidential Information constitutes a valuable asset of the Company and is owned solely by the Company or the person from whom the Company received it; (b) unauthorized use or disclosure of Confidential Information may be highly prejudicial to the interests of its owner, an invasion of privacy, or a misappropriation or improper disclosure of trade secrets; and (c) unauthorized use or disclosure to third parties of Confidential Information during the term of this Agreement constitutes a breach of this Agreement and may result in immediate termination or other legal action by the Company.

Contractor Parties agree to abide by policies established by the Company for the protection of Confidential Information, and to take reasonable precautions to safeguard Confidential Information, including the protection of documents from theft, unauthorized duplication and discovery of contents, and restrictions on access by other persons. Contractor Parties further agree not to cause the transmission, removal, or transport of any Confidential Information from the Company's facilities, except as necessary or desirable in the course of Contractor Parties' duties, without the prior written approval of the Company.

- C. Non-Competition During Employment. Contractor Parties agree that, during Contractor Parties' relationship with Company, Contractor Parties will not establish or act, directly or indirectly, by way of ownership, management or otherwise, whether or not for compensation, as a consultant, employer, employee, agent, principal, partner, stockholder (other than ownership of less than 5% of the outstanding capital stock of a publicly-traded corporation), officer, director or in any other representative or individual capacity for, any business that (i) is similar to, (ii) is directly competitive with, or (iii) provides goods or services to any aspect of the business in which the Company is engaged or contemplates engaging. During Contractor Parties' relationship with Company, Contractor Parties will not undertake any planning for any outside business competitive with the Company.
- D. Business Opportunities. Contractor Parties agree that during the term of this Agreement, Contractor Parties will not take for Contractor Parties' own use, and will promptly notify the Company of, any and all business opportunities of which Contractor Parties becomes aware that relate, directly or indirectly, to the current or reasonably anticipated future business of the Company. Contractor Parties agree that they will not route, channel, or otherwise direct any business opportunities or potential business for the Company to any third parties or entities.
- E. Non-Solicitation of Company Employees, Contractors, Consultants, and Customers. Contractor Parties agree that during any the period of Contractor Parties' engagement with Company and for two (2) years thereafter, Contractor Parties will not disrupt, damage, impair or interfere with the Company's business by recruiting, soliciting, contacting, or otherwise inducing any of the Company's employees, contractors, customers, clients, partners, vendors, and/or consultants to enter into employment, consulting, services, or other type of relationship with them and/or each of them, and/or any other person or business entity that competes with the Company. Contractor Parties also agree that, during the period of



Contractor's engagement with Company and for a period of two (2) years thereafter, Contractor will not solicit any Company customer or potential customer whom Contractor Parties or any of them had any relationship with, communication with, and/or exposure to, during the course of their relationship with Company, or attempt to do so, whether directly or indirectly, in order to persuade or cause said actual and/or potential customer to reduce, limit, and/or discontinue doing business with Company in favor of doing business with any other person or entity including any of the Contractor Parties, and/or any third parties under their direct or indirect control.

Contractor Parties and each of them waive all rights, claims, allegations, defenses, and arguments that the obligations in this Paragraph are unenforceable, waived, estopped, the subject of laches, void against public policy, unlawful, or in any other way improper. In connection with any alleged breach or breach of the obligations in this Paragraph, Company shall be entitled to seek all remedies available in law or equity, all of its damages, the remedies provided for in this Agreement, and all attorneys' fees and costs it incurs in any proceeding, investigation, and/or claim relating thereto.

## 5. Inventions & Intellectual Property.

- A. Ownership / Work for Hire. All Inventions and Intellectual Property (as hereinafter defined) which the Contractor and/or Contractor Parties create pursuant to Contractor Parties' services for Company shall belong to and are the ownership of Company. "Inventions and Intellectual Property" means any and all inventions, discoveries, conceptual designs, creative endeavors, fabrication designs, designs for special effects, animatronics, animations, developmental designs, utility designs, all creative works of authorship, including video, audio, written works, photographs, electronic, music, print, hard-copy, audiovisual works of any kind or nature, or any other work of authorship fixed in a tangible or intangible form of expression, developments, improvements, formulas, techniques, concepts, data and ideas (whether or not patentable or registrable under copyright or similar statute) made, conceived, reduced to practice, or learned by Contractor, either alone or jointly with others, that (a) result from work performed by Contractor for the Company, (b) utilize Company's equipment, supplies, facilities, or Confidential Information, (c) are made, conceived or completed during the course of working for, on behalf of, or at the direction of Company, or (d) are related to the business or the actual or demonstrably anticipated research or development of the (altogether collectively "Works for Hire"); in perpetuity, throughout the world, free of any claim whatsoever by Contractor Parties or by any persons deriving any rights or interests from Contractor Parties. Company (and its licensees) shall have the sole and exclusive right to use the Works for Hire throughout the world or any part thereof in any manner. Contractor Parties irrevocably and unconditionally waive any and all "moral rights" and similar laws and principles throughout the world that Contractor Parties have or may have in the Works for Hire and hereby agrees not to make any claim against Company and/or its licensees or distributors based on any such rights. To the extent, if any, that Contractor Parties is ever deemed an "author" of any Works for Hire, Contractor Parties grant to Company a power of attorney, irrevocable and coupled with interest, on Company's behalf and in Company's name, to apply for and obtain, and on obtaining the same, to assign to Company, all such copyrights and renewals, and extensions thereof. Contractor Parties agree that all Creative Works or Inventions that Contractor Parties prepares, individually or in cooperation with others, that is specifically requested by the Company or commissioned for use as a contribution to a collective work, or as a supplementary work, a compilation, or an instructional text, will be considered a "work made for hire," as that term is defined by 17 U.S.C. Section 101. Whenever requested by the Company, both during and after the term of this Agreement, Contractor Parties will assist the Company, at the Company's expense, in obtaining, maintaining, defending, registering and from time to time enforcing, in any and all countries, the Company's rights to the Works for Hire. Contractor Parties warrant and represent that none of its services or content provided to Company pursuant to this Agreement shall infringe any copyright, patent, trade secret, or other proprietary right held by any third party; and shall indemnify, defend and hold the Company, its successors, officers, directors, agents and employees harmless from any and all actions, causes of action, claims, demands, cost, liabilities, expenses and damages (including attorneys' fees) arising out of or in connection with any breach under this Agreement by Contractor Parties, or any act or omission by Contractor Parties resulting in the infringement of any third party's rights. Contractor Parties acknowledge the Company's right, title, and interest in and to all service marks, trademarks, and trade names used by the Company and agrees not to engage in any activities or commit any acts, directly or indirectly, that may contest, dispute, or



otherwise impair the Company's right, title, and interest therein, nor shall the Contractor cause diminishment of value of said trademarks or trade names through any act or representation. Contractor Parties shall not apply for, acquire, or claim any right, title, or interest in or to any such service marks, trademarks, or trade names, or others that may be confusingly similar to any of them, through advertising or otherwise. Effective as of the termination of this Agreement, whether by expiration or otherwise, the Contractor and/or Contractor Parties shall cease to use all of the Company's trademarks, marks, and trade names.

7. **Non-Disparagement.** Contractor and/or Contractor Parties agree that they and each of them shall not, at any time during this Agreement or thereafter, make comments, whether oral or in writing, that tend to disparage or injure the Company, its officers, directors, agents, employees, products and services, provided, however, that nothing in this Agreement will be construed to preclude Contractor and/or Contractor Parties from complying with the terms of a validly issued subpoena.

9. **Survival.** The parties hereto explicitly agree that their rights and obligations hereunder will survive termination of this Agreement, Services, and Project Assignments.

10. **Other Activities.** This Agreement is not an exclusive agreement, and Contractor and/or Contractor Parties is free to engage in other independent contractor activities unrelated to the Contractor Services provided under this Agreement, provided that the Contractor and/or Contractor Parties' other activities do not cause a breach of a provision in this Agreement.

11. **Indemnity.** Contractor and/or Contractor Parties shall indemnify and hold harmless the Company and its officers, members, managers, employees, agents, contractors, sublicensees, affiliates, subsidiaries, successors, and assigns from and against any and all damages, liabilities, costs, expenses, claims, and/or judgments, including, without limitation, reasonable attorneys' fees and disbursements (collectively, the "Claims") that any of them may suffer from or incur and that arise or result primarily from (i) any negligence, willful misconduct, and/or negligent acts of the Contractor and/or Contractor Parties arising from, arising out of, connected with, or relating to this Agreement, Contractor and/or Contractor Parties services and/or relationship with Company, or (ii) the Contractor's breach of any of its obligations, agreements, or duties under this Agreement. Nothing herein shall be construed to require Contractor and/or Contractor Parties to indemnify Company for Company's own negligence, willful misconduct, or intentional acts.

12. **Miscellaneous.**

- A. **Governing Law; Jurisdiction; Venue.** This Agreement will be construed in accordance with and governed by the laws of the California, without giving effect to the conflict of law principles.
- B. **Successors and Assigns.** Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.
- C. **Notices.** All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail. Each party may furnish an address substituting for the address given above by giving notice to the other parties.
- D. **Severability.** In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.
- E. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.
- F. **Amendment and Waiver.** This Agreement may be amended only by a written agreement executed by the parties hereto and bearing the signatures of both parties. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.



- G. Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.
- H. Prevailing Party. In any action or proceeding initiated by Company to enforce any provision of this Agreement, Company shall be entitled to its attorneys' fees and costs.
- I. Arbitration, Jury Trials, Class Actions. Contractor Parties and each of them agree to voluntarily forego the right to a jury trial, court trial, and/or participation in a class action or mass action and submit all disputes, allegations, claims, actions, or other legal proceedings in any way relating to this Agreement, Contractor Parties' services with Company, and/or in any way connected to their relationship with Company, specifically including but not limited to claims alleging inducement into this arbitration provision as well as this Agreement as a whole, to binding arbitration which shall take place with ADR Services, Inc., in Los Angeles, California and such arbitration shall be heard by a single arbitrator, either agreed to upon by the parties or selected by strike procedure using the their provided roster. The California Code of Civil Procedure and Rules of Evidence shall apply. Contractor
- J. Injunctive Relief. Nothing herein or in the subparagraphs above, however, shall limit the ability of Company to seek immediate injunctive relief from a court of competent jurisdiction in the event of potential immediate or irreparable injury to Company. Contractor Parties acknowledge that it would be difficult for the Company to measure actual damages resulting from any breach by Contractor of this Agreement, and that money damages alone would be an inadequate remedy for any such breach. Accordingly, Contractor Parties agree that Company will be entitled, in addition to any other remedies it may have, to specific performance, injunctions, or other appropriate orders to correct or restrain any such breach by Contractor, without showing or proving any actual damage sustained by the Contractor or posting any bond or other security.
- K. Notices. All notices required by this Agreement shall be sufficient if delivered in writing either personally to the party to be notified or deposited in the United States mail, postage prepaid and return receipt requested, addressed to the party at the addresses set forth in the preamble of this Agreement, or as provided to one party by the other from time to time; with a duplicate copy provided via email.
- L. Independent Counsel. Contractor Parties represent that they and each of them have had the opportunity to consult an attorney regarding the terms of this Agreement.
- M. Survival. The parties hereto explicitly agree that their rights and obligations hereunder will survive termination of Contractor Parties' relationship with the Company.



**EXHIBIT B**

## EMPLOYEE AGREEMENT

This EMPLOYEE AGREEMENT, comprised of this page, the attached Standard Terms and Conditions and all Exhibits hereto (collectively taken together as one agreement "Agreement") is entered into by and between TMTE Inc. (collectively "Company"), and the following employee ("Employee"), effective on the date below ("Effective Date"), subject to all Terms, Conditions, and attachments hereto:

Employee Name:

David Wolan

Employee Address:

342 Hauser Blvd 402 Los Angeles, CA 90036

Employee E-mail  
Address:

David.Wolan@metals.com

Effective Date/Start Date:

8.9.18

Compensation:

See Exhibit A

Position Type:

\$13.25 Hourly:

Paid Sick Leave:

As required by state/municipal law

Agreed to and accepted by:

EMPLOYEE

X

  
Signature

David Wolan  
Printed Name



## STANDARD TERMS AND CONDITIONS

1. **At-Will Employment Engagement.** The Company engages Employee to provide services as may be needed, sought, or required by Company from time, as well as other duties as are customarily performed by an employee in a similar position, subject to all of Company's rules, regulations and other guidelines (collectively "Employee Services"). The Employee's Services are being retained "At Will" and nothing herein shall change such circumstances of employment.
2. **Best Efforts.** Employee agrees to perform faithfully, industriously, and to the best of Employee's ability, experience, and talents, all of the duties that may be required by the express and implicit terms of this Agreement, to the satisfaction of Company. Such duties shall be provided at such place(s) as the needs, business, or opportunities of Company may require from time to time.
3. **Compensation.** Employee shall be paid the compensation as stated on the first page of this Agreement (or via Exhibit), subject to adjustment by Company as may be needed from time to time. Expenses incurred by Employee, if pre-approved by Company, will also be reimbursed to Employee.
4. **Termination.** Company or Employee may terminate this Agreement at any time (provided 14 days' written notice for termination by Employee) with or without cause and without further obligation to each other, except for Company's payment due for Employee's satisfactory services rendered prior to the date of notice of termination. In the event notice of termination is given by either party, Employee shall furnish such information, materials and any other appropriate assistance to the Company as may be reasonably required by the Company in connection with the Employee Services provided. Upon termination of this Agreement, Employee shall promptly deliver to the Company all Company documents and materials (including all copies) pertaining to (i) Employee's engagement, (ii) Confidential Information, and (iii) Inventions and other Intellectual Property, whether prepared by Employee or otherwise in Employee's possession or control.
5. **Indirect Claims.** Employee's employment relationship is directly with the Company, and not with any officer, manager, member, director, staff, individual, owner, shareholder, or other person individually associated in the past, present, or future with Company ("Individual Person"). Employee understands and acknowledges that in the event a dispute ever exists between Employee and Company, that Employee's claims may only be brought against Company directly, and not any Individual Person associated with, affiliated with, or relating to Company. Other than for claims alleging direct individual liability for sexual harassment pursuant to the Fair Employment and Housing Act, Employee waives, releases, and discharges all other claims, causes of action, of every kind and nature, against all Individual Persons associated with, affiliated with, or relating to Company for labor law, wage/hour, employment law, breach of contract, and similar claims, specifically claims asserting misclassification, overtime, missed meal/rest breaks, inaccurate wage statements, itemized wage statements, waiting time penalties, minimum wage, breach of contract, conversion, fraud, concealment, retaliation, discrimination, hostile work environment, wrongful discharge, constructive discharge, any and all claims made pursuant to FEHA and/or *Tameny*, and any related claims for associated penalties, statutory penalties, attorneys' fees, interest, and otherwise, whether pursuant to any individual action or private attorney general action. In making this release, Employee acknowledges Employee has reviewed California Civil Code Section 1542 which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his settlement with the debtor."

Being aware of said code section, Employee hereby expressly waive all rights Employee may have against all past, present, and future Individual Persons connected to, affiliated with and/or relating to Company, as well as under any other statute or common law principles of similar effect insofar as those rights pertain to the matters released herein.

In the event Employee alleges claims against Individual Persons and Company seeks to enforce the terms of this Paragraph to seek dismissal of such claims, Company shall be entitled to its attorneys' fees and costs associated with doing so.



6. Loyalty and Confidentiality Covenants.

- A. Duty of Loyalty and Lawful Conduct. Employee agrees to perform loyally and conscientiously Employee's duties under this Agreement. Employee shall not perform Employee's duties, or take any action or omission that in any way violates federal, state, or municipal laws, regulations, statutes, or ordinances, or violates the rights of Company, Company's other employees, or third parties.
- B. General Confidentiality Clause. At all times during Employee's relationship with Company and thereafter, Employee will hold in trust, keep confidential and not disclose to any third party, or make any use of, the Confidential Information of the Company or of the persons with which the Company has business relationships, except as may be desirable or necessary in the course of Employee's relationship with the Company, without the prior written consent of the Company. For purposes of this Agreement, the term "Confidential Information" includes all information that is maintained by the Company, or any employee of Company, to which the Employee gains access, including but not limited to the following: all proprietary or intellectual property, including creative works of authorship, including video, audio, written works, electronic, print, hard-copy, audiovisual works of any kind or nature, or any other work of authorship fixed in a tangible or intangible form of expression, software, software code, worldwide patents, patent applications, patent rights, copyrights, copyright registrations, moral rights, trade names, trademarks, service marks, domain names and registrations and/or applications for all of the foregoing, trade secrets, know-how, work rights, rights in trade dress and packaging, goodwill and all other intellectual property rights and proprietary rights relating in any way thereto, technical information, including research programs and methods, product development plans, functional and technical specifications, technology, inventions, ideas, concepts, designs, drawings, analysis, research, methods, techniques, processes, computer software, data, and other technical know-how and materials, business and marketing plans, business models, worldwide marketing rights, client or customer databases, lead lists, vendor lists, vendor identities, partner identities, lists, and identifying information, software, customer and supplier lists, price lists, mailing lists, financial information, advertising campaigns, profit margins, operational margins, customer and supplier records and other confidential or proprietary information relating thereto, distributor names and identities, or any other proprietary techniques and confidential information that the Company develops, compiles or owns, or that the Company receives under conditions of confidentiality from the persons with which it has business relationships, or any other valuable information of the Company relating to the business affairs or fields of interest of the Company. Confidential Information may take the form of software, audio or video tapes, computer media, printouts, records, databases, manuals, letters, notebooks, reports, blueprints, drawings, sketches or photographs, including copies, and any other type of material, in all forms known or hereinafter created, all of which at all times shall remain the property of the Company or the person from which the Company obtained such materials.

Employee agrees and understand that (a) Confidential Information constitutes a valuable asset of the Company and is owned solely by the Company or the person from whom the Company received it; (b) unauthorized use or disclosure of Confidential Information may be highly prejudicial to the interests of its owner, an invasion of privacy, or a misappropriation or improper disclosure of trade secrets; and (c) unauthorized use or disclosure to third parties of Confidential Information during the term of this Agreement constitutes a breach of this Agreement and may result in immediate termination or other legal action by the Company.

Employee agrees to abide by policies established by the Company for the protection of Confidential Information, and to take reasonable precautions to safeguard Confidential Information, including the protection of documents from theft, unauthorized duplication and discovery of contents, and restrictions on access by other persons. Employee further agrees not to cause the transmission, removal, or transport of any Confidential Information from the Company's facilities, except as necessary or desirable in the course of Employee's duties, without the prior written approval of the Company.

- C. Non-Competition During Employment. Employee agrees that, during Employee's relationship with Company, Employee will not establish or act, directly or indirectly, by way of ownership, management or otherwise, whether or not for compensation, as a consultant, employer, employee, agent, principal, partner, member, manager, director, officer, stockholder (other than ownership of less than 5% of the outstanding capital stock of a publicly-traded corporation), or in any other representative or individual capacity for, any business that (i) is similar to, (ii) is directly competitive



with, or (iii) provides goods or services to any aspect of the business in which the Company is engaged or contemplates engaging. During Employee's relationship with Company, Employee will not undertake any planning for any outside business competitive with the Company.

- D. Business Opportunities. Employee agrees that during the term of this Agreement, Employee will not take for Employee's own use, and will promptly notify the Company of, any and all business opportunities of which Employee becomes aware that relate, directly or indirectly, to the current or reasonably anticipated future business of the Company. Employee agrees that not to route, channel, or otherwise direct any business opportunities or potential business for the Company to any third parties or entities.
- E. Non-Solicitation of Company Employees, Employees, Consultants, and Customers. Employee agrees that during any the period of Employee's engagement with Company and for two (2) years thereafter, Employee will not disrupt, damage, impair or interfere with the Company's business by recruiting, soliciting, contacting, or otherwise inducing any of the Company's employees, contractors, customers, clients, potential customers and/or clients, partners, vendors, and/or consultants to enter into employment, consulting, services, or other type of relationship with them and/or each of them, and/or any other person or business entity that competes with the Company. Employee also agree that, during the period of Employee's engagement with Company and for a period of two (2) years thereafter, Employee will not solicit any Company customer or potential customer whom Employee or any of them had any relationship with, communication with, and/or exposure to, during the course of their relationship with Company, or attempt to do so, whether directly or indirectly, in order to persuade or cause said actual and/or potential customer to reduce, limit, and/or discontinue doing business with Company in favor of doing business with any other person or entity, whether or not that includes Employee, and/or any third parties under their direct or indirect control.

Employee and each of them waive all rights, claims, allegations, defenses, and arguments that the obligations in this Paragraph are unenforceable, waived, estopped, the subject of laches, void against public policy, unlawful, or in any other way improper.

In connection with any alleged breach or breach of the obligations in this Paragraph 6, inclusive, Company shall be entitled to seek and recover from Employee and/or all third parties all remedies available in law or equity, all of its damages, the remedies provided for in this Agreement, and all attorneys' fees and costs it incurs in any proceeding, investigation, and/or claim relating thereto.

## 7. Inventions & Intellectual Property.

- A. Ownership / Work for Hire. All Inventions and Intellectual Property (as hereinafter defined) which the Employee creates pursuant to Employee's services for Company shall belong to and are the ownership of Company. "Inventions and Intellectual Property" means any and all inventions, discoveries, conceptual designs, creative endeavors, utility designs, all creative works of authorship, including video, audio, written works, photographs, electronic, music, print, hard-copy, audiovisual works of any kind or nature, or any other work of authorship fixed in a tangible or intangible form of expression, developments, improvements, formulas, techniques, concepts, data and ideas (whether or not patentable or registrable under copyright or similar statute) made, conceived, reduced to practice, or learned by Employee, either alone or jointly with others, that (a) result from work performed by Employee for the Company, (b) utilize Company's equipment, supplies, facilities, or Confidential Information, (c) are made, conceived or completed by Employee during the course of working for, on behalf of, or at the direction of Company, or (d) are related to the business or the actual or demonstrably anticipated research or development of Company (altogether collectively "Works for Hire"); in perpetuity, throughout the world, free of any claim whatsoever by Employee or by any persons deriving any rights or interests from Employee. Company (and its licensees) shall have the sole and exclusive right to use the Works for Hire throughout the world or any part thereof in any manner. Employee irrevocably and unconditionally waive any and all "moral rights" and similar laws and principles throughout the world that Employee have or may have in the Works for Hire and hereby agrees not to make any claim against Company and/or its licensees or distributors based on any such rights. To the extent, if any, that Employee is ever deemed an "author" of any Works for Hire, Employee grants to Company a power of attorney, irrevocable and coupled with interest, on Company's behalf and in Company's name, to apply for and obtain, and on obtaining the same, to assign to Company, all such copyrights and renewals, and extensions thereof. Employee agrees that all Inventions and Intellectual Property



that Employee prepares, individually or in cooperation with others, that is specifically requested by the Company or commissioned for use as a contribution to a collective work, or as a supplementary work, a compilation, or an instructional text, will be considered a "work made for hire," as that term is defined by 17 U.S.C. Section 101. Whenever requested by the Company, both during and after the term of this Agreement, Employee will assist the Company, at the Company's expense, in obtaining, maintaining, defending, registering and from time to time enforcing, in any and all countries, the Company's rights to the Works for Hire. Employee warrants and represents that none of its services or content provided to Company pursuant to this Agreement shall infringe any copyright, patent, trade secret, or other proprietary right held by any third party; and shall indemnify, defend and hold the Company, its successors, officers, directors, agents and employees harmless from any and all actions, causes of action, claims, demands, cost, liabilities, expenses and damages (including attorneys' fees) arising out of or in connection with any breach under this Agreement by Employee, or any act or omission by Employee resulting in the infringement of any third party's rights. Employee acknowledges the Company's right, title, and interest in and to all service marks, trademarks, and trade names used by the Company and agrees not to engage in any activities or commit any acts, directly or indirectly, that may contest, dispute, or otherwise impair the Company's right, title, and interest therein, nor shall the Employee cause diminishment of value of said trademarks or trade names through any act or representation. Employee shall not apply for, acquire, or claim any right, title, or interest in or to any such service marks, trademarks, or trade names, or others that may be confusingly similar to any of them, through advertising or otherwise. Effective as of the termination of this Agreement, whether by expiration or otherwise, the Employee shall cease to use all of the Company's trademarks, marks, and trade names.

8. **Non-Disparagement.** Employee agrees not to, at any time during this Agreement or thereafter, make comments, whether oral or in writing, that tend to disparage or injure the Company, its officers, directors, agents, employees, members, managers, owners, shareholders, affiliates, insurers, assigns, successors, contractors, employees, and other related parties, or the Company's products and services. Nothing, however, herein will be construed to preclude Employee from complying with the terms of a validly issued subpoena.

9. **Survival.** The parties hereto explicitly agree that in the event this Agreement is terminated, their rights and obligations pursuant to Paragraphs 4-11, inclusive, will survive termination of this Agreement.

10. **Indemnity.** Employee shall defend, indemnify and hold harmless the Company and its officers, members, managers, employees, agents, contractors, employees, sublicensees, affiliates, subsidiaries, successors, and assigns from and against any and all damages, liabilities, costs, expenses, claims, and/or judgments, including, without limitation, reasonable attorneys' fees and disbursements (collectively, the "Claims") that any of them may suffer from or incur and that arise or result primarily from (i) any negligence, willful misconduct, and/or negligent acts of the Employee arising from, arising out of, connected with, or relating to this Agreement, Employee's services and/or relationship with Company, or (ii) the Employee's breach of any of its obligations, agreements, or duties under this Agreement. Nothing herein shall be construed to require Employee to indemnify Company for Company's own negligence, willful misconduct, or intentional acts.

11. **Miscellaneous.**

- A. Governing Law; Jurisdiction; Venue. This Agreement will be construed in accordance with and governed by the laws of the California, without giving effect to the conflict of law principles.
- B. Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.
- C. Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail. Each party may furnish an address substituting for the address given above by giving notice to the other parties.
- D. Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.
- E. Entire Agreement. This Agreement embodies the entire agreement and understanding between the



parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.

- F. Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto and bearing the signatures of both parties. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.
- G. Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.
- H. Company's Attorneys' Fees. In any action or proceeding initiated by Company to enforce any provision of this Agreement, Company shall be entitled to its attorneys' fees and costs.
- I. Arbitration, Jury Trials, Class Actions. Employee voluntarily foregoes the right to a jury trial, court trial, and/or participation in a class action or mass action and agrees to submit all disputes, allegations, claims, actions, or other legal proceedings in any way relating to this Agreement, Employee's services with Company, and/or in any way connected to Employee's relationship with Company, specifically including but not limited to claims alleging inducement into this arbitration provision as well as this Agreement as a whole, to binding arbitration which shall take place with ADR Services, Inc., in Los Angeles, California and such arbitration shall be heard by a single arbitrator, either agreed to upon by the parties or selected by strike procedure using the their provided roster. In the event Employee disregards this mandatory arbitration provision and files a court action nonetheless, Company may move to stay the lawsuit and compel arbitration, and in such circumstances, Company shall be entitled to its attorneys' fees and costs incurred in doing so.
- J. Injunctive Relief. Nothing herein or in the subparagraphs above, however, shall limit the ability of Company to seek immediate injunctive relief from a court of competent jurisdiction in the event of potential immediate or irreparable injury to Company. Employee acknowledges that it would be difficult for the Company to measure actual damages resulting from any breach by Employee of this Agreement, and that money damages alone would be an inadequate remedy for any such breach. Accordingly, Employee agrees that Company will be entitled, in addition to any other remedies it may have, to specific performance, injunctions, or other appropriate orders to correct or restrain any such breach by Employee, without showing or proving any actual damage sustained by the Employee or posting any bond or other security.
- K. Notices. All notices required by this Agreement shall be sufficient if delivered in writing either personally to the party to be notified or deposited in the United States mail, postage prepaid and return receipt requested, addressed to the party at the addresses set forth in the preamble of this Agreement, or as provided to one party by the other from time to time; with a duplicate copy provided via email.
- L. Independent Counsel. Employee represent that Employee has had the opportunity to consult an attorney regarding the terms of this Agreement.



Employee's compensation, shall be as follows, subject to all terms and conditions herein:

1) **Regular Pay:** 13.25, payable in the frequency required by law.

- 2) **Discretionary Commissions:** Provided that Employee is not in breach of any of its contractual and other obligations to Company and subject to Company's sole discretion, Employee may also earn up to **eight percent (8%) commission** ("Commission") on the gross revenues of actual, final, non-rescinded, and closed transactions of sales of Company's exclusive precious metals products to customers ("Sales") which Sales are originated, developed, and closed by Employee. All Commissions payable to Employee shall be set off (reduced) by all Regular Pay earned by Employee in each month in which Commissions are earned and/or paid.

In the event two or more Employees are responsible for the origination, development, and closing of a particular Sale, the Commission percentages may be shared between them per agreement, and if no agreement can be reached, the split Commissions shall be determined by Company at its sole discretion, and said decision by Company shall be final, binding, and non-appealable.

In the event Sales are at any point for any reason refunded and/or rescinded in whole or in part, the Commission upon such Sale(s) shall similarly be deemed null and void and no longer properly retained by Employee ("Unearned Commissions"); Company shall be authorized to offset against Employee's future Commissions all Unearned Commissions.

Commissions may be paid to Employee at Company's discretion, if feasible by Company's determination, in light of Employee's overall performance, which must meet Company's expectations to Company's subjective satisfaction.

Commissions may further only be paid at Company's discretion, if feasible in light of Company's financial, operational, and other metrics, including but not limited to net earnings, adjusted EBITDA, cash flow, gross or net profit margin, productivity, expense, margins, operating efficiency, customer satisfaction, working capital, and all other financial aspects. Nothing herein shall be construed to require Company to make or pay any Commissions, unless it elects to do so at its sole discretion, nor create any rights or entitlement in Commissions by Employee. The Commissions set forth herein may be modified, adjusted, reduced, and/or altered by Company at any time at its sole discretion.

Employee must be an active employee of Company at the times Commissions: a) accrue; b) are earned; and c) paid, in order to qualify for the receipt of Commissions. Employees departing their relationship with Company prior to the date Commissions are actually paid shall not be entitled to receive Commissions.

Commissions will be determined by Company no less frequently than on a quarterly basis, and paid no later than forty-five (45) days following the end of the applicable quarter. Company may have the discretion but not the obligation to pay any Commissions sooner and more frequently than as set forth herein, and shall not be deemed to have waived any of its rights hereunder through such payments.

Company's Commissions to Employee shall, for tax purposes, be deemed ordinary income/compensation for services provided.

- 3) **Advances on Commissions.** Company may, at its sole discretion, from time to time, in amounts and in frequencies of its sole determination, make advances to Employee of future Commissions ("Advances"). All Advances paid to Employee shall reduce the Commissions earned and/or paid to Employee in each month in which Advances were paid, and Company shall be entitled to offset from Commissions earned and/or paid to Employee the full sum of Advances provided to Employee. Nothing herein shall entitle Employee to receive Advances of any amount; and Company's payment of one or more Advances to Employee shall not create any expectation of future Advances.



PROOF OF SERVICE  
CCP § 1013(a)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed within the county of Los Angeles, state of California. I am over the age of 18 and not a party to the within action. My business address is 5525 Oakdale Avenue, Suite 350, Woodland Hills, California 91364.

On January 4, 2019, I served the foregoing document described as: DAVID WOLAN CROSS-COMPLAINT FOR: 1) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; 2) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; 3) FAILURE TO PAY WAGES FOR ALL HOURS WORKED; 4) FAILURE TO PAY OVERTIME COMPENSATION; 5) FAILURE TO PROVIDE MANDATED MEAL PERIODS AND PAID REST BREAKS; 6) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS in this action.

— by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

X by placing — the original X a true copy thereof enclosed in a sealed envelope addressed as follows:

Rabeh M.A. Soofi, Esq.  
AXIS Legal Counsel  
5670 Wilshire Boulevard, 18<sup>th</sup> Floor  
Los Angeles, California 90036

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Law Office of Kenneth A. Goldman, PC  
15303 Ventura Boulevard, Suite 1650  
Sherman Oaks, California 91403

X BY MAIL


X I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Woodland Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation or postage meter date is more than one day after date of deposit for mailing in affidavit.

— BY PERSONAL SERVICE. I delivered such envelope by hand to offices of the addressee.

Executed on January 4, 2019 at Woodland Hills, California.

X STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— FEDERAL I declare the above is true and correct and I am a member of the bar of this court.

 DAVID J. COHEN